

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1371 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

INDUCTOTHERM (I) LTD

Versus

UNION OF INDIA

Appearance:

M/S TRIVEDI & GUPTA for Petitioners
MR PB MAJMUDAR for Respondent No. 1
MR MUKESH R SHAH for Respondent No. 2, 3

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE C.K.BUCH
Date of decision: 08/07/1999

ORAL JUDGEMENT

Liberty to amend prayer clause.

Rule. Mr.M.R.Shah appears and waives service of notice
of Rule on behalf of respondent No.1. In the facts

and circumstances of the case, the matter is taken up for final hearing today .

This petition is filed for appropriate writ, order or direction quashing and setting aside the order passed by the Appellate Authority on Stay Order No. 199/99 .Annexure 'A' to the petition as also order-in-original No. 01 to 21/ MP/ 97- DA dated January 6, 1998, Annexure 'I' to the petition.

The case of the petitioners was that petitioner No.1 was engaged in the business of manufacturing induction furnace falling under a particular entry. Petitioner No.1, on the basis of such entry, used to take certain benefits. Show cause notices came to be issued by the authorities on the ground that value of notional interest of advances/ deposits was required to be added in the assessable value of goods. Personal hearing was also afforded to the petitioners. Initially, on March 13,1997 , hearing was fixed, but it was adjourned to March 31,1997 and thereafter to April 14,1997. April 14,1997 was, however, declared a public holiday on account of Ambedkar Jayanti. Obviously, therefore, no hearing could take place . It was the case of the petitioners that thereafter, no hearing was fixed and the petitioners were not called for personal hearing. In fact, the petitioners inquired from the authorities and even addressed communications so that hearing could be afforded. Unfortunately, however, an order was passed without hearing the petitioners. Since the order was against the petitioners, they approach the appellate authority by filing an appeal as also by filing a stay application. On stay application, an order was passed which is also challenged in the present petition.

Learned counsel for the petitioners contended that the order passed by the appellate authority granting relief on pre-deposit is not in accordance with law. He, however, contended that this Court may take into account the fact that initially an order was passed without hearing the petitioners. The first authority had issued notice and even communication was sent for personal hearing but the matter could not be disposed of even on April 14,1997 which was a public holiday and thereafter the petitioners were not called for personal hearing. He, therefore, submitted that instead of remanding the matter to the appellate authority by quashing the order passed on stay application, it would be appropriate if this Court sets aside the order-in-original passed by the first authority by directing him to pass appropriate order by affording an opportunity of hearing to the

petitioners.

We see considerable force in the argument of the learned counsel for the petitioners . As stated by us, show cause notices were issued and the petitioners were called for personal hearing. On earlier two occasions, personal hearing did not take place and April 14, 1997 was declared as a public holiday. In these circumstances, it was obligatory on the part of the competent authority to issue fresh notice so that hearing could be afforded.

Only on that ground and without observing anything on merits, the order-in-original passed by the first authority deserves to be quashed and set aside and is accordingly set aside. It is needless to state that in view of the order -in- original being set aside, the order passed on stay application will not remain in force. The authority will now pass an appropriate order in accordance with law. We may state that since we have disposed of the petition only on the basis of non-observance of principles of natural justice, we express no opinion on the merits and as and when the matter is taken up by the authority, appropriate order will be passed in accordance with law.

Rule is accordingly made absolute with no order as to costs.

parekh